REMARKS

Claims 1 – 30 remain in the application and stand rejected. Claims 1, 3 – 6, 8 – 10, 12, 15, 20 – 23, 25 – 27, 29 and 30 are amended herein. Although this Response is being timely filed, the Commissioner is hereby authorized to charge any additional fees that may be required for this paper or credit any overpayment to Deposit Account No. 19-2179.

The "examiner should always look for enabled, allowable subject matter and communicate to applicant what that subject matter is at the earliest point possible in the prosecution of the application." MPEP 2164.04, last paragraph (emphasis original).

Claims 1, 3 – 6, 9, 10, 12, 15, 20 – 23, 25 – 27, 29 and 30 are amended for clarity and to better recite the invention. In particular, the "present invention prevents such QoS degradation by selectively suppressing service requests **on the network** during periods of high message traffic where message drop or data message loss could significantly degrade network performance." Page 8, lines 15 – 18 (emphasis added). Moreover, for a network with endpoints communicating with each other over a number (*m*) of routers, "network traffic level determination is a measure of the message load handled by the m routers 110_m on a network at a given time." Page 10, lines 5 – 7. In other words, the determination is the instantaneous full network load at the particular instant.

Thus, claim 1 is amended to recite "determining a system traffic level indicating the load level of system traffic across a system at a given time;" at lines 3 – 4. Likewise, claim 22 is amended to recite the "measurement measuring the level of traffic on a network of a plurality of network end points communicating with each other" at lines 6 – 7; claim 25 is amended to recite "determining the [[a]] level of system traffic across a system at a given time" at lines 3 – 4; and claim 29 is amended to recite

"updating the list of available system services based on a network traffic measurement of the network traffic load at a given time and network performance parameters associated with system services" at lines 5 – 7. Thus, this amendment to claims 1, 22, 25 and 29 is supported by the specification. No new matter is added and none of this is shown by any reference of record.

Claims 3 – 6, 8 – 10 and 30 are amended to responsive to the amendment to independent claims 1 and 29 and to further highlight these differences. Thus,claim 3 is amended to recite that the time is periodic; claim 4 is amended to recite that the server is part of the system; and, claim 6 is amended to recite that the system includes multiple endpoints. This is supported by Figure 2, for example. Claims 8 is amended to recite that the endpoints include communications devices, which is supported by page 1, lines 9 – 12, for example. Claims 5, 9 and 10 are amended to recite that the system traffic may include both point to point communications and conferences. This is supported by page 8, lines 19 – 21 ("For example, end users may request among available services which include, but are not limited to, point-to-point telephone calls, point-to-point video phone calls, teleconferences, or video conferences."). Thus, this amendment to claims 4 – 6, 8 – 10 and 30 is not shown by any reference of record and is supported by the specification. No new matter is added.

Claims 12, 15 and 21 – 23 are amended for consistency. Means plus function claims 25 – 27, 29 and 30 are amended to removed inappropriate articles. No new matter is added.

Claims 1, 3 – 8, 20, 21, 24, 25 and 29 are rejected under 35 U.S.C. §102(e) as being unpatentable over published U.S. Patent application No. 2002/0126699 to Cloonan et al. Claims 2, 11 – 13, 18, 19, 22, 26 and 27 are rejected under 35 U.S.C. §103(a) as being unpatentable over Cloonan et al. in combination with published U.S. Patent application No. 2008/0031439 to Synnestvedt et al. Claims 9 and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Cloonan et al. and Synnestvedt et al. in further combination with published U.S. Patent application No. .

2003/0122387 to Ni. Claims 14 – 17, 23, 28 and 30 are rejected under 35 U.S.C. §103(a) as being unpatentable over Cloonan et al. and Synnestvedt et al. in further combination with U.S. Patent No. 6,978,144 to Choksi. The rejection is respectfully traversed.

Regarding the rejection of claims 1, 3 – 8, 20, 21, 24, 25 and 29, the Office action relies on Cloonan et al. Fig. 1, Fig. 2, item 225 and paragraphs 22, 23, 53 and 55 to teach the present invention.

Cloonan et al. teaches "a method of controlling traffic loading on a cable modem termination system (CMTS) having a plurality of basic upstream data service flow scheduling types for a cable data system ... ." Paragraph 0016. "[F]or a cable subscriber to access the Internet through their cable television provider, the subscriber must have a CM. The CM is similar to the **Cable Modem Termination System (CMTS) equipment required at the cable company's headquarters**, except for the greater size required at the headquarters." Paragraph 0004 (emphasis added). "FIG. 1 illustrates a simplified cable data system 10 with a **CMTS** 30." Paragraph 0011 (emphasis added). Cloonan et al. teaches that "CAC principles can be applied to traffic control problems within a CMTS." Paragraph 0023. More specifically, however, Cloonan et al. teaches "how to use CAC to control traffic on **upstream channels** to a CMTS based on service level parameters." *Id* (emphasis added). "The **CMTS** apparatus **of FIG. 2** is comprised of a cable interface (201) that is coupled to a buffer circuit (205)." Paragraph 0024 (emphasis added. Applicants note that the Cloonan et al. CMTS includes a cable interface 201 that includes "data throughput monitor (220) has the task of determining the rate of data packet flow" through the Cloonan et al. CMTS in Cloonan et al. figure 2. Paragraph 0026. So, Cloonan et al. teaches the CMTS determining traffic on specific channels and granting channel access based on available channel bandwidth; Cloonan et al. fails to teach monitoring system traffic load as recited in the claims as rejected or as amended. Paragraph 0053 ("CAC can accept the request, deny the request, accept the request, but flag the condition on the link or connection as being oversubscribed for the particular data service flow scheduling type,

and/or **switch** the subscriber **to a different link** or connection if available." Emphasis added).

Moreover, regarding claims 3 – 5, the Office action asserts that Cloonan et al. shows a "server (item 302)" periodically making a system traffic level determination. However, "FIG. 3, ... illustrates a system 300 which includes a **CMTS 302** ... . The CMTS 302 has a plurality of channels (links) 304 which connect the CMTS 302 to a plurality of subscriber cable modems of 'CMs' 306. ..., CAC can be used to **monitor** traffic congestion on some or all of the **upstream** channels on the **links 304**," i.e., those links connected to this CMTS. Paragraph 0054. Cloonan et al. clearly indicates, *supra*, that the CMTS is, essentially, a cable modem, not a server. Therefore, Cloonan et al. fails to teach and does not anticipate the present invention, as recited in claims 1, 3 – 8, 20, 21, 24, 25 and 29. Reconsideration and withdrawal of the rejection of claims 1, 3 – 8, 20, 21, 24, 25 and 29 under 35 U.S.C. §102(e) is respectfully requested.

Neither does any of Synnestvedt et al., Choksi and/or Ni add what is missing from Cloonan et al. to result in the present invention as recited in claims 1, 20, 25 or 29, from which claims 2, 9 – 19, 22, 23, 26 – 28 and 30 depend. Dependent claims include all of the differences with the references, as the claims from which they depend. MPEP §2143.03 ("If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)."). Therefore, the combination of Cloonan et al. with Synnestvedt et al., Choksi and/or Ni, alone or further in combination with each other or any other reference of record, fails to result in and does not suggest the present invention as recited in claims 2, 9 – 19, 22, 23, 26 – 28 and 30. Reconsideration and withdrawal of the rejection of claims 2, 9 – 19, 22, 23, 26 – 28 and 30 under 35 U.S.C. §103(a) is respectfully requested.

The applicants thank the Examiner for efforts, both past and present, in examining the application. Believing the application to be in condition for allowance, the applicants respectfully request that the Examiner reconsider and withdraw the rejection

of claims 1 – 30 under 35 U.S.C. §§102(e) and 103(a) and allow the application to issue.

The applicants note that MPEP §706 "Rejection of Claims," subsection III, "PATENTABLE SUBJECT MATTER DISCLOSED BUT NOT CLAIMED" provides in pertinent part that

> If **the examiner** is satisfied after the search has been completed that patentable subject matter has been disclosed and the record indicates that the applicant intends to claim such subject matter, he or she **may note** in the Office action that **certain aspects or features** of the patentable invention have not been claimed and that if properly claimed such claims **may be given favorable consideration.**

(emphasis added.) The applicants believe that the written description of the present application is quite different than and not suggest by any reference of record. Accordingly, should the Examiner believe anything further may be required, the Examiner is requested to contact the undersigned attorney at the telephone number listed below for a telephonic or personal interview to discuss any other changes.

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Respectfully submitted,

By: _____

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